

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MAURICE E. GOSLIN
Claimant

VS.

GOSLIN & SONS DRYWALL
Respondent

AND

CIGNA

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 154,207

ORDER

ON the 10th day of March, 1994, the claimant's application for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge James R. Ward dated February 11, 1994, came on for oral argument.

APPEARANCES

The claimant appeared by and through his attorney, John J. Bryan, of Topeka, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Gary R. Terrill, of Overland Park, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Matthew S. Crowley, of Topeka, Kansas. There were no other appearances.

RECORD

The record reviewed and considered by the Appeals Board for purposes of this appeal included the transcript of preliminary hearing proceedings of February 3, 1994, the exhibits attached and the pleadings filed of record in this case.

ISSUES

Claimant contends that the Administrative Law Judge erred in denying his application for medical treatment. Respondent and insurance carrier had previously been ordered to provide medical treatment on claimant's behalf with Dr. Delgado. Claimant sought a change of authorized treating physician to a chiropractor, namely Dr. Drybread. This request was denied by the Administrative Law Judge who found that claimant failed

to sustain his burden of proving that the services of the health care provider furnished by the respondent/insurance carrier were not satisfactory. Claimant appeals raising the following issues:

- (1) Whether the provisions of K.S.A. 44-510c(1) as enacted effective July 1, 1993, are applicable to persons injured prior to July 1, 1993.
- (2) Whether the Administrative Law Judge erroneously found claimant did not meet his burden of proof of showing the services of the authorized health care provider were not satisfactory?
- (3) What are the criteria to be used in determining whether the services of a health care provider are "satisfactory"?
- (4) From whose point of view is the determination made as to whether the services of the health care provider are satisfactory, i.e., the perspective of the claimant, the perspective of the respondent, the perspective of the Administrative Law Judge? (This issue is only applicable if it is determined that the 1993 enactment is retroactive.)
- (5) Whether the July 1, 1993, amendments to K.S.A. 44-510c(1), if applied retroactively, violate claimant's due process rights and/or equal protection rights under the United States and/or Kansas Constitution.
- (6) Whether the 1993 amendment to K.S.A. 44-510(c) is so vague and/or ambiguous as to violate the United States and/or Kansas Constitution.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant seeks chiropractic treatment. Claimant acknowledges respondent has provided authorized medical treatment from Dr. Delgado who has performed two or three surgeries on claimant, as well as provided medication, physical therapy and spinal injections over a course of treatment spanning several years. When last seen by Dr. Delgado, claimant was released from further treatment for his low back and was given a permanent impairment rating. Claimant was also seen at the request of his attorney by Dr. Edward Prostic, an orthopedic surgeon. Dr. Prostic said that claimant may need anti-inflammatory medication but did not recommend any other treatment. He did not recommend any physical therapy or chiropractic treatment for claimant's low back.

Claimant has seen several chiropractors on his own, most recently Dr. Drybread, who has recommended claimant come back on a regular basis for chiropractic treatment. Claimant seeks authorization of Dr. Drybread or, in the alternative, for respondent to provide a list of three chiropractors from whom claimant may choose one.

The Administrative Law Judge treated claimant's motion as one for a change of health care provider pursuant to K.S.A. 44-510(c)(1). Although there was some question in the mind of the Administrative Law Judge as to whether or not the 1993 amendments to the Workers Compensation Act dealing with a change of health care provider should be considered a procedural or substantive change, for purposes of this case he determined it to be procedural and thereby applicable to this pre-July 1, 1993, accident. Claimant disputes this finding and further argues that the evidence supports claimant's request for chiropractic treatment. Claimant alleges that the services of his authorized treating physician are unsatisfactory and contends that the Administrative Law Judge has the authority to order respondent to provide a list of three doctors of chiropractic when

chiropractic treatment is shown to be reasonable, appropriate, and desired. Respondent points out that the authorized treating physician has released claimant from further treatment, provided a permanent impairment rating and has not referred claimant for chiropractic treatment. Likewise, claimant has seen another orthopedic medical doctor at the request of claimant's counsel, who likewise did not recommend further treatment other than anti-inflammatory medication, nor recommend chiropractic treatment.

The decision by the Administrative Law Judge denying claimant's application for authorization of an additional health care provider does not exceed the Administrative Law Judge's jurisdiction and is, therefore, not subject to review by the Appeals Board. K.S.A. 44-551 limits the jurisdiction of the Appeals Board on appeals from preliminary hearing orders to review only those cases where it is alleged that the Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested. K.S.A. 44-534a lists certain types of issues which may be considered jurisdictional and, therefore, subject to review. The disputed issue in this case is not one of those listed as jurisdictional and the decision does not exceed the authority of the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order entered by Administrative Law Judge James R. Ward dated February 11, 1994, denying claimant's motion for change of physician is not subject to review and therefore remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of June, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: John J. Bryan, PO Box 797, Topeka, Kansas 66601-0797
Gary R. Terrill, PO Box 12290, Overland Park, Kansas 66282
Matthew S. Crowley, PO Box 4306, Topeka, Kansas 66604-0306
James R. Ward, Administrative Law Judge
George Gomez, Director